

to clear the intention of parties ; in which the haver may fill up, not only dispositions or assignations to all the granter had, but even treasonable declarations, or what else he thinks fit,—is of dangerous consequence.

*MS. page 1.*

1713. *Nov. 25.* PATRICK M'DOWAL of Freugh *against* M'GHIE of Balmaghie.

JOHN M'GHIE having pursued Patrick M'Dowal, for proving the tenor of a bond granted by Sir Alexander M'Culloch of Myreton, as principal; Godfrey M'Culloch, his son, James M'Culloch of Mool, and the deceased Patrick M'Dowal of Freugh, the defender's father, as cautioners ; to the deceased Alexander M'Ghie of Balmaghie, the pursuer's grandfather, for the sum of 1800 merks : in the year 1670, the principal bond being produced out of the register of Kirkcudbright, where it had been recorded in the year 1684, in a very lame condition; carrying the subscription of Freugh, the cautioner, but only the initial letters of Alexander M'Culloch the principal debtor's name, the rest of it being worn away: The Lords found, that a fair extract of the said bond, with other adminicles produced, made it presumed, that the bond was whole and entire at the time of the registration ; the defender having owned the bond to have been a true deed, but alleged only that it was cancelled when put in the register. The adminicles assigned to abstract the verity of its never being cancelled, were these, 1. Any defect in the bond seemed to proceed rather from ill keeping than out of any design to cancel or discharge it : and the registers of the court had been unduly kept. 2. Sir Godfrey M'Culloch, as principal, after his father, Sir Alexander's death, and Murray of Burghtoun, as cautioner, did, 29th October, 1679, corroborate the bond, and in December, 1681, the former granted a bond of relief to Mool, one of the cautioners in the original bond. For payment of the debt in controversy, diligence by horning and denunciation was used in the year 1684, inhibition in the year 1685, and adjudication in the year 1687; and one of the cautioners had promised payment, a matter of fourteen days only before the registration. The Lords considered that an extract out of a lawful register, makes faith in all cases except in *causa falsi* : because of the presumed fidelity of the keeper of a public office, who, till the contrary be proved, is not to be supposed to have recorded a cancelled writ, though he is not obliged to know whether a writ, apparently formal, be true or false.

*MS. page 5.*

1713. *Nov. 26.* Executors of HUGH BLAIR, late Dean of Guild of Edinburgh, *against* Colonel FRANCIS CHARTERS.

IN a process, at the instance of the executors of Dean of Guild Blair, who was donator of Thomas Row's escheat, against Colonel Charters, for payment of L783 Scots, contained in a bond, and L.400, contained in a subscribed account for clothes furnished by Thomas Row to the defender, a decret having been pronounced :

The Lords refused to take notice of a reclaiming bill presented by him, after the days allowed for reclaiming by the Act of Sederunt, 8th July, 1709, were elapsed; albeit the complainer had raised and executed a reduction of the interlocutor.

*MS. page 5.*

1713. *November 27.* DUTCHESS of BUCCLEUGH *against* SIR DAVID NAIRN.

SIR DAVID NAIRN and Mr. David Scrimzeor having dealt together in bills of exchange betwixt London and Edinburgh for some years, and, for conveniency, mutually transmitted their accounts in single sheets, by the ordinary post: the balance due by Sir David, in those from July, 1687, till June, 1697, transmitted by him to Mr. Scrimzeor, partly written by Sir David's own hand, partly by his servant's, was L.2409, 14s. 1d. Sterling; and in those transmitted by Scrimzeor to him, L.2542, 1s. 8d.; and Sir David's letter to Mr. Scrimzeor, dated 11th November, 1697, bore,—“ I observe that the balance of your account due by me, as you state it, is L.2542, 1s. 8d., and as I state it, is L.2409, 14s. 1d. By which it would appear, that I have omitted several articles to my own prejudice. If you can point me to these errors, I will make it easier. I desire you will insert whatever you think you ought to have credit, or be made debtor for: which would bring the matter to a narrower close; whereas now the whole account stands open.” The Dutchess of Buccleugh, as executrix-creditor to Mr. Scrimzeor, pursued Sir David for the balance aforesaid, of L.2409, 14s. 1d.; and insisted upon the fore-said accounts and letters, as vouchers of the balance.

ALLEGED for the defender,—That the accounts are not probative, but still open: being sent down only as a scheme or scrolls to lead another to a right account; and the letter an appeal to the books of both parties.

ANSWERED for the pursuer,—It is true that the accounts, not being fitted and signed, are not so unalterably probative as not to suffer rectification upon discovery of any omission, or wrong stating of an article. But they are probative against the transmitter, and make up a charge against him *presumptione*, till red-argued by him.

The Lords found, That the schedules and letter founded on by the pursuer are not of themselves probative to instruct the charge, but that the same ought to be otherwise proved.

*MS. page 6.*

1713. *December 4.* THOMAS STUART of Fintilloch *against* JOHN M'WHIRTER, Elder of Garrihorn.

IN the complaint, at the instance of Thomas Stuart against John M'Whirter, concluding damage for his granting commission to John M'Whirter, younger of